

DOCUMENT RESUME

02704 - [A1312867]

[Bid Responsiveness and Costing]. B-188495. June 23, 1977. 2 pp.

Decision re: Craig Systems Corp.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Defense Logistics Agency; Davko

Engineering and Mfg. Co.; Gichner Mobile Systems.

Authority: B-185890 (1976). B-168557 (1970). B-170957 (1971).

B-175015 (1972). B-187700 (1977).

The protester objected to any award of a contract for electrical equipment shelters to either of its competitors since neither met the requirements of the invitation for bids. The first article test requirement may be waived, even though the request for a waiver and supporting information was submitted by the bidder after the bid opening date, contrary to the solicitation provision requiring submission with the bid. The protest was denied. (Author/SC)

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DECISION



P.L. II
Hufford
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: E-188493

DATE: June 23, 1977

MATTER OF: Craig Systems Corporation

DIGEST:

First article test requirement may be waived even though request for waiver and supporting information was submitted by bidder after bid opening date contrary to IFB provision requiring submission with bid.

Craig Systems Corporation (Craig) protests any award to either Davko Engineering and Manufacturing Company (Davko) or Gichner Mobile Systems (Gichner) under invitation for bids (IFB) DSA 700-77-B-0566, issued by the Defense Logistics Agency (DLA) for electrical equipment shelters.

Inasmuch as the procuring agency does not propose to make an award to Davko, Craig's protest as to that bidder is academic. With regard to Gichner's bid, Craig argues that it should not be evaluated without considering the cost of first article testing because Gichner failed to request waiver and provide with its bid relevant information required by the solicitation. If first article testing is required for Gichner, Craig's bid would be evaluated as lower than Gichner's.

In this connection clause C27A of the IFB provides that:

"(f) First Article Testing may be waived. In the event of waiver for individual offers, such offers will be evaluated without considering the cost thereof. Offerors who, under a prior Government contract, have tested and secured approval of a first article similar to the item to be procured under this solicitation must furnish the following information

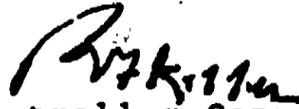
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with their offer: Identify Government agency (including address) approving the test report, including contract number and date; attach two copies of approved test report, and attach a listing showing material differences, if any, between the item previously tested and the item to be supplied pursuant to this solicitation."

The record shows that after bid opening Gichner asked for waiver and supplied information regarding its prior contracts for the required item in which waiver was approved. Waiver of first article testing was approved for both Gichner and Craig based upon their prior performance history.

In general, whether a requirement for first article testing may be waived is a matter within the discretion of the procuring agency. Joseph Pollack Corp., B-185890, June 29, 1976, 76-1 CPD 418. Although the bidder assumes the risk in failing to present evidence warranting a waiver, we do not object to waiver of first article testing even though a previous contract number was not furnished with the bid if the Government has knowledge of an offeror's prior manufacturing experience. B-168557, January 23, 1970. This is the case because waiver of first article testing involves a determination which relates to the experience level of the contractor and therefore is a matter which concerns the firm's responsibility rather than the responsiveness of its bid. B-170957, March 27, 1971; B-175015, September 29, 1972. Bidder responsibility may be established after bid opening. Continental Service Company, B-187700, January 25, 1977, 77-1 CPD 53.

Accordingly, we have no objection to the proposed award to Gichner and Craig's protest is denied.


Deputy Comptroller General
of the United States